

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 579X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN PARKE AND VERMILLION COUNTIES, IN

Decided: December 23, 2004

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon an approximately 1.17-mile line of its railroad between milepost BD-191.41 at Montezuma and milepost BD-192.58 at Hillsdale in Parke and Vermillion Counties, IN. Notice of the exemption was served and published in the Federal Register on May 26, 2000 (65 FR 34249-50). The exemption was scheduled to become effective on June 25, 2000, but a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by the Parke County Redevelopment Commission (PCRC) to purchase the entire line.¹ On June 23, 2000, PCRC timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to acquire the line pursuant to a donation by CSXT.

By decision served June 28, 2000, PCRC was found to be financially responsible, and the effective date of the decision authorizing abandonment was postponed to permit the OFA process to proceed. In a decision served July 14, 2000, PCRC was authorized under 49 U.S.C. 10904 to acquire the line by donation and the exemption was dismissed, effective on the date the sale was consummated.² However, by letter filed on October 18, 2002, the Board was notified that the parties did not intend to proceed under the OFA process.

¹ This automatically stayed the effective date of the exemption for 10 days until July 5, 2000. See 49 CFR 1152.27(c)(2)(i).

² On May 22, 2000, the Indiana Department of Transportation (InDOT) filed a request for a 180-day public use condition under 49 U.S.C. 10905. Also, by petition filed on June 7, 2000, the Indiana Trails Fund, Inc. (ITF) filed a request for the issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a 180-day public use condition under 49 U.S.C. 10905 to negotiate with CSXT for acquisition of the right-of-way for use as a recreational trail. Both requests were held in abeyance pending completion of the OFA process.

On December 30, 2002, a NITU was issued in this proceeding: (1) authorizing ITF to negotiate an interim trail use/rail banking agreement with CSXT until June 28, 2003, for the 1.17-mile line of railroad, (2) authorizing a public use condition for ITF, InDOT, or any other interested person to negotiate with CSXT for acquisition of the right-of-way,³ and (3) extending the deadline for CSXT to consummate the abandonment and to file its notice of consummation until August 27, 2003.⁴ At the request of CSXT, the negotiating period under the NITU was extended numerous times; the latest extension expired on December 22, 2004.⁵

On December 22, 2004, CSXT filed a request to further extend the NITU negotiating period until June 20, 2005, and to extend the consummation deadline until August 19, 2005. CSXT states that it has not consummated the abandonment, has been unable to finalize negotiations with ITF, and desires to continue to negotiate for interim trail use/rail banking with ITF.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue trail use negotiations by requesting an extension, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiation period will be extended to June 20, 2005, and the consummation notice filing deadline will be extended to August 19, 2005.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CSXT's request for an extension of the NITU negotiation period and its request for an extension of time to exercise abandonment authority are granted.
2. The negotiating period under the NITU is extended until June 20, 2005.

³ The public use condition expired on April 16, 2003.

⁴ By decision served December 24, 2003, the deadline for CSXT to file its notice of consummation was further extended until August 25, 2004.

⁵ The most recent extension of the negotiation period under the NITU was authorized by decision served on July 21, 2004.

3. The authority to abandon must be exercised on or before August 19, 2005.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary